

(b) CLERICAL AMENDMENT--The analysis for subtitle VII of title 49, United States Code, is amended by inserting after the item relating to section 475 the following: "477. ENVIRONMENTAL REVIEW."

#### **SEC. 402. GOVERNOR'S CERTIFICATE.**

Section 47106(c) is amended--

(1) in paragraph (1)--

(A) by inserting "and" after the semicolon at the end of subparagraph

(A)(ii);

(B) by striking subparagraph (B); and

(C) by redesignating subparagraph (C) as subparagraph (B);

(2) in paragraph (2)(A) by striking "stage 2" and inserting "stage 3";

(3) by striking paragraph (4); and

(4) by redesignating paragraph (5) as paragraph (4).

#### **SEC. 403. LOW-EMISSION AIRPORT VEHICLES AND INFRASTRUCTURE.**

(a) PURPOSE.--The purpose of this section is to permit the use of funds made available under subchapter 471 to encourage commercial service airports in air quality nonattainment and maintenance areas to undertake projects for gate electrification, acquisition or conversion of airport vehicles and airport-owned ground support equipment to acquire low-emission technology, low-emission technology fuel systems, and other related air quality projects on a voluntary basis to improve air quality and more aggressively address the constraints that emissions can impose on future aviation growth. Use of those funds is conditioned on airports receiving credits for emissions reductions that can be used to mitigate the air quality effects of future airport development. Making these projects eligible for funding in addition to those projects that are already eligible under section 47102(3)(F) is intended to support those projects that, at the time of execution, may not be required by the Clean Air Act (42 U.S.C. 7501 *et seq.*), but may be needed in the future.

(b) Section 47102(3) is amended by adding new paragraphs (K) and (L) to read as follows:

“(K) work necessary to construct or modify airport facilities to provide low-emission fuel systems, gate electrification, and other related air quality improvements at a commercial service airport, if the airport is located in an air quality nonattainment or maintenance area (as defined in sections 171(2) and 175(A) of the Clean Air Act (42 U.S.C. 7501(2), 7505a) and if such project will result in an airport receiving appropriate emission credits, as described in section 47139 of this title. The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall issue guidance describing eligible low-emission modifications and improvements and stating how airport sponsors will demonstrate benefits.

“(L) a project for the acquisition or conversion of vehicles and ground support equipment, owned by a commercial service airport, to low-emission technology, if the airport is located in an air quality nonattainment or maintenance area (as defined in sections 171(2) and 175(A) of the Clean Air Act (42 U.S.C. 7501(2), 7505a) and if such project will result in an airport receiving appropriate emission credits as described in section 47139 of this title. The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall issue guidance describing eligible low-emission vehicle technology and stating how airport sponsors will demonstrate benefits. For airport-owned vehicles and equipment, the acquisition of which are not otherwise eligible for assistance under this subchapter, the incremental cost of equipping such vehicles or equipment with low-emission technology is allowable.”.

(c) DEFINITION – Section 47102 is further amended by redesignating paragraphs (11) through (21), as redesignated by section 314(a) of this Act, as paragraphs (12) through (22) respectively, and inserting a new paragraph (11) as follows:

“(11) ‘low-emission technology’ means technology for new vehicles and equipment whose emission performance is the best achievable under emission standards established by the Environmental Protection Agency and that relies

exclusively on alternative fuels that are substantially non-petroleum based, as defined by the Department of Energy, but not excluding hybrid systems.”.

(d) EMISSIONS CREDITS.—(1) Subchapter I of Chapter 471 is further amended by adding a new section 47139 at the end as follows:

**"§47139. Emission credits for air quality projects.**

"(a) IN GENERAL.--The Secretary and the Administrator of the Environmental Protection Agency shall jointly agree on how to assure that airport sponsors receive appropriate emission credits for projects described in sections 40117(a)(3)(G) or 47102(3)(K) and (L) of this title. Such agreement must, at a minimum, include the following conditions—

“(1) that the provision of credits is consistent with the Clean Air Act (42 U.S.C. 7402 et seq.);

“(2) that credits generated by the emissions reductions in criteria pollutants are kept by the airport sponsor and may be used for purposes of any current or future general conformity determination or as offsets under the New Source Review program;

“(3) that there is national consistency in the way credits are calculated and are provided to airports;

“(4) that credits are provided to airport sponsors in a timely manner; and

“(5) that there is a method by which the Secretary can be assured that, for any specific project for which funding is being requested, the appropriate credits will be granted.

“(b) ASSURANCE OF RECEIPT OF CREDITS.--(1) As a condition for making a grant for a project described in sections 47102(3)(K) and (L), or 47140 of this title, or as a condition for granting approval to collect or use a passenger facility fee for a project described in sections 40117(a)(3)(G), 47102(3)(K) and (L), or 47140 of this title, the Secretary must receive assurance from the State in which the project is located, or from the Administrator of the Environmental Protection Agency where there is a Federal Implementation Plan, that the airport sponsor will receive appropriate emission credits in accordance with the conditions of this subsection.

"(2) The Secretary and the Administrator of the Environmental Protection Agency shall jointly agree on how to provide emission credits to projects previously approved under section 47136 of this title during fiscal years 2001 through 2003, under terms consistent with the conditions enumerated in this section."

(2) The analysis of subchapter I of chapter 471 is amended by adding at the end the following:

"47139. Emission Credits for Air Quality Projects."

(e) AIRPORT GROUND SUPPORT EQUIPMENT EMISSIONS RETROFIT PILOT PROGRAM.—(1) Subchapter I of chapter 471 is further amended by adding a new section 47140 at the end as follows:

**"§47140. Airport ground support equipment emissions retrofit pilot program.**

"(a) IN GENERAL.--The Secretary of Transportation shall carry out a pilot program at not more than 10 commercial service airports under which the sponsors of such airports may use an amount subject to apportionment to retrofit existing eligible airport ground support equipment which burns conventional fuels to achieve lower emissions utilizing emission control technologies certified or verified by the Environmental Protection Agency.

"(b) LOCATION IN AIR QUALITY NONATTAINMENT OR MAINTENANCE AREAS.--A commercial service airport shall be eligible for participation in the pilot program only if the airport is located in an air quality nonattainment or maintenance area (as defined in sections 171(2) and 175(A) of the Clean Air Act (42 U.S.C. 7501(2), 7505a)).

"(c) SELECTION CRITERIA.--In selecting from among applicants for participation in the pilot program, the Secretary shall give priority consideration to applicants that will achieve the greatest air quality benefits measured by the amount of emissions reduced per dollar of funds expended under the pilot program.

"(d) MAXIMUM AMOUNT.--Not more than \$500,000 may be expended under the pilot program at any single commercial service airport.

"(e) GUIDELINES.--The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall establish guidelines regarding the types of retrofit projects eligible under this pilot program by considering remaining equipment

useful life, amounts of emission reduction in relation to the cost of projects, and other factors necessary to carry out this section. The Secretary may give priority to ground support equipment owned by the airport and used for airport purposes.

"(f) ELIGIBLE EQUIPMENT DEFINED.--For purposes of this section, the term "eligible equipment" is defined as ground service or maintenance equipment that is located at the airport and is used to support aeronautical and related activities on the airport, *provided that* such equipment remains in operation at the airport."

(2) The analysis of subchapter I of chapter 471 is further amended by adding at the end the following:

"47140. Airport Ground Support Equipment Emissions Retrofit Pilot Program."

#### **SEC. 404. LOW-EMISSION AIRPORT VEHICLES AND GROUND SUPPORT EQUIPMENT.**

Section 40117(a)(3) is further amended by inserting at the end the following:

"(G) A project for the acquisition or conversion of ground support equipment or airport-owned vehicles used at a commercial service airport with, or to, low-emission technology or cleaner burning conventional fuels, or the retrofitting of such equipment or vehicles that are powered by a diesel or gasoline engine with emission control technologies certified or verified by the Environmental Protection Agency to reduce emissions, if the airport is located in an air quality nonattainment or maintenance area (as defined in sections 171(2) and 175(A) of the Clean Air Act (42 U.S.C. 7501(2), 7505a), and if such project will result in an airport receiving appropriate emission credits as described in section 47139 of this title. The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall issue guidance for eligible projects and for how benefits must be demonstrated. The eligible cost is limited to the incremental amount that exceeds the cost of acquiring other vehicles or equipment that are not low-emission and would be used for the same purpose, or to the cost of low-emission retrofitting. For purposes of this paragraph, the term "ground support equipment" means service and maintenance equipment used at an airport to support aeronautical operations and related activities."

## **SEC. 405. AIR TOUR MANAGEMENT ACT CLARIFICATION.**

Section 40128 is amended--

- (1) in paragraph (a)(1) by inserting ", as defined by this section," after "lands" the first time it appears;
- (2) in paragraphs (b)(3)(A), (B) and (C), by inserting "over a national park" after "operations";
- (3) in paragraph (b)(3)(D), by striking "at the park" and inserting "over a national park";
- (4) in paragraph (b)(3)(E), by inserting "over a national park" after "operations" the first time it appears;
- (5) in paragraphs (c)(2)(A)(i) and (c)(2)(B), by inserting "over a national park" after "operations";
- (6) in paragraph (f)(1), by inserting "over a national park" after "operation"; and
- (7) in paragraph (f)(4)--
  - (A) in subparagraph (f)(4)(A)--
    - (i) by striking "commercial air tour operation" and inserting "commercial air tour operation over a national park"; and
    - (ii) by striking "park, or over tribal lands," and inserting "park (except Grand Canyon National Park), or over tribal lands (except those within or abutting the Grand Canyon National Park),"; and
  - (B) in subparagraph (f)(4)(B), by inserting "over a national park" after "operation".

## **SEC. 406. JUDICIAL REVIEW.**

Section 46110(a) is amended by adding at the end the following new sentence:

“Except as otherwise provided in this Subtitle, judicial review of an order issued, in whole or in part, pursuant to this Part, Part B of this Subtitle , or sections 114(l) and 114(s) of this title, shall be in accordance with the provisions of this section.”.

## **Sec. 407. NOISE DISCLOSURE REQUIREMENTS.**

(a) DEFINITIONS.-- Section 47501 is amended by adding at the end --

"(3) "Federal agency" means any department, agency, corporation, or other establishment or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

"(4) "Federal entity for lending regulation" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Farm Credit Administration, and with respect to a particular regulated lending institution means the entity primarily responsible for the supervision of the institution.

"(5) "Federal agency lender" means a Federal agency that makes direct loans secured by improved real estate or a mobile home, to the extent such agency acts in such capacity.

"(6) "residential real estate" means real estate upon which a residential dwelling is located.

"(7) "noise exposure map" means a noise exposure map that complies with section 47503 of this title and part 150 of title 14, Code of Federal Regulations.

"(8) "regulated lending institution" means any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation."

(b) NOISE EXPOSURE MAPS.-- Section 47503 is amended by revising paragraph (b) to read as follows:

"(b) REVISED MAPS.--If, in an area surrounding an airport, a change in the operation of the airport would establish a substantial new noncompatible use, or would significantly reduce noise over existing noncompatible uses, beyond the forecast year, the airport operator shall submit a revised noise exposure map to the Secretary showing the new noncompatible use or noise reduction."

(c) NOTIFICATION OF NOISE EXPOSURE.--Chapter 457 is amended by adding at the end the following new section:

**"§47511. Notification of noise exposure.**

"(a) NOISE EXPOSURE MAP.-- An airport operator shall make available to lending institutions, upon request, the most recent noise exposure map submitted under section 47503 of this title.

"(b) LIST OF AIRPORTS.- The Secretary shall maintain a list of airports for which the airport operators have submitted a noise exposure map under section 47503 of this title.

"(c) REGULATED LENDING INSTITUTIONS. -- Each Federal entity for lending regulation (after consultation and coordination with the Federal Financial Institutions Examination Council) shall direct by regulation that a regulated lending institution may not make, increase, extend or renew any loan secured by residential real estate or a mobile home that is located or to be located in the vicinity of an airport on the Secretary's list described in subsection (b), unless the loan applicant's purchase agreement for the residential real estate or mobile home provides notice to the purchaser (or satisfactory assurances are provided that the seller has provided written notice to the purchaser prior to the purchaser's signing of the purchase agreement) that the property is within the area of the noise contours on a noise exposure map submitted under section 47503 of this chapter. The notice to the purchaser shall be acknowledged by the purchaser's signing of the purchase agreement or other notification document and the regulated lending institution shall retain a record of the receipt of the notice by the purchaser.

"(d) FEDERAL AGENCY LENDERS. -- Each Federal agency lender shall by regulation require notification in the manner provided in subsection (c) with respect to any loan that is made by the Federal agency lender and secured by residential real estate or a mobile home located or to be located in the vicinity of an airport on the Secretary's list described in subsection (b).

"(e) CONTENTS OF NOTICE. -- The notice required under this section shall disclose--

"(1) that the property is located within the noise contours depicted on the most recent noise exposure map submitted by the airport operator



according to section 47503 of this chapter, and is subject to aircraft noise exposure; and

"(2) the name and telephone number of the airport where the purchaser may obtain more information on the aircraft noise exposure."

#### **SEC. 408. COMPATIBLE LAND USE PLANNING AND PROJECTS BY STATE AND LOCAL GOVERNMENTS.**

(a) Subchapter I of chapter 471 is further amended by adding the following new section at the end:

##### **"47141. Compatible land use planning and projects by State and local governments.**

"(a) IN GENERAL--The Secretary of Transportation may make grants under chapter 471 from amounts set aside under section 47117(c)(1) of this title to States and units of local government for land use compatibility plans or projects resulting from those plans for the purposes of making the use of land areas around large and medium hub primary airports compatible with aircraft operations if:

"(1) the airport operator has not submitted a noise compatibility program to the Secretary under section 47504 of this title, or has not updated such program within the past 10 years; and

"(2) the land use plan or project meets the requirements of this section.

"(b) SPONSORSHIP--A land use plan or project must be sponsored by the public agency that:

"(1) has the authority to plan and adopt land use control measures, including zoning, in the planning area in and around a large or medium hub primary airport;

"(2) provides written assurance to the Secretary that it will work with the affected airport to identify and adopt such measures; and

"(3) provides written assurance to the Secretary that it will achieve, to the maximum extent possible, compatible land uses consistent with Federal land use compatibility criteria under 47502(3) of this title, and that those compatible land uses will be maintained.

"(c) CONDITIONS- A land use project must be included in a plan satisfactory to the Secretary that--

"(1) is reasonably consistent with the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses;

"(2) addresses ways to achieve and maintain compatible land uses, including but not limited to zoning, building codes, and any other projects under section 47504(a)(2) of this title that are within the authority of the public agency sponsor to implement;

"(3) is subject to an agreement between the public agency sponsor and the airport owner or operator that the development of the land use compatibility plan will be done cooperatively;

"(4) contains noise contours provided by the airport operator that are consistent with the airport operation and planning, including any noise abatement measures adopted by the airport operator as part of its own noise mitigation efforts, during an airport development project, or during this land use planning process;

"(5) does not duplicate, and is not inconsistent with, the airport operator's noise compatibility measures for the same area; and

"(6) has received concurrence by the airport operator prior to adoption by the public agency sponsor.

"(d) GUIDELINES –The Secretary shall establish guidelines to administer this section in accordance with the purposes and conditions described in this section. The Secretary may require the public agency sponsor to which a grant may be awarded under this section to provide progress reports and other information as the Secretary determines to be necessary to carry out this section.

"(e) ELIGIBLE PROJECTS- The Secretary may approve grants under this section for land use compatibility projects only if the Secretary is satisfied that the project is consistent with the guidelines established by the Secretary under this section, that the airport has provided the assurances required by this section, that the Secretary has received evidence that the public agency sponsor has implemented, or has made provision to implement, those elements of the plan that are not eligible for Federal

financial assistance, and that such projects are not inconsistent with Federal standards for these purposes.

“(f) ASSURANCES FROM SPONSORS- The Secretary may require the public agency sponsor to which a grant may be awarded under this section to provide assurances in addition to those required by this section as the Secretary determines to be necessary to carry out this section.”.

(b) CONFORMING AMENDMENT.--The analysis of subchapter I of chapter 471 is further amended by adding at the end the following:

"47141. Compatible land use planning and projects by State and local governments."

## **TITLE V--FAA STRUCTURAL REFORM**

### **SEC. 501. DEPUTY ADMINISTRATOR.**

(a) APPOINTMENT BY SECRETARY.--Section 106 of title 49 is amended--

(1) in subsection (b), by striking the first three sentences and inserting "The head of the Administration is the Administrator who is appointed by the President, by and with the advice and consent of the Senate.";

(2) in subsection (d) by redesignating paragraphs (1), (2) and (3) as paragraphs (3), (4) and (5) respectively, and inserting new paragraphs (1) and (2) as follows:

"(1) The Administration has a Deputy Administrator who is appointed by the Secretary. The Deputy shall carry out the duties and powers prescribed by the Administrator. The Deputy Administrator acts for the Administrator when the Administrator is absent or unable to serve, or when the office of the Administrator is vacant.

"(2) The annual rate of basic pay of the Deputy Administrator shall be set by the Secretary but shall not exceed the annual rate of basic pay payable to the Administrator of the Federal Aviation Administration."; and

(3) by striking subsection (i) and redesignating subsections (j) through (r) as subsections (i) through (q) respectively.

(b) CONFORMING AMENDMENT.--Section 5315 of title 5, United States Code, is amended by striking "Deputy Administrator, Federal Aviation Administration.".

**SEC. 502. MANAGEMENT ADVISORY COMMITTEE MEMBERS.**

Subsection (p) of section 106 is amended--

(1) in the subsection heading at the end by inserting "AND THE AIR TRAFFIC SERVICES BOARD"; and

(2) in paragraph (2), by-

(A) striking "(18)" and inserting "(13)";

(B) at the end of clause (C)(i), inserting ", except that initial appointments made after February 1, 2003 shall be made by the Secretary of Transportation";

(C) at the end of clause (C)(ii), striking the semi colon and inserting "; and";

(D) in paragraph (D), striking "employees, by--" and all that follows through the end and inserting "employees, by the Secretary of Transportation."; and

(E) striking paragraph (E).

**SEC. 503. REORGANIZATION OF THE AIR TRAFFIC SERVICES SUBCOMMITTEE.**

Subsection (p) of section 106 is amended--

(1) by amending paragraph (3) to read as follows:

"(3) NO FEDERAL OFFICER OR EMPLOYEE.--No member appointed under paragraph (2)(C) or to the Air Traffic Services Board under paragraph (7)(B) may serve as an officer or employee of the United States Government while serving as a member of the Council or Board.".

(2) in paragraph (4)(C), by inserting "or Board" after "Council" in both places it appears;

(3) in paragraph (5), by inserting ", or the Board," after "Council";

(4) in paragraph (6) by--

(A) in subparagraph (C)--

(i) striking "SUBCOMMITTEE" and inserting "BOARD";

and

(i) striking "member" and inserting "members"; and

(iii) striking "under paragraph (2)(E)" both times it appears and inserting "to the Board";

(B) in subparagraph (D), striking "under paragraph (2)(E)" and inserting "to the Board";

(C) in subparagraph (E), inserting "or Board" after "Council";

(D) in subparagraph (F), inserting "of the Council or Board" after "member";

(E) in the second sentence of subparagraph (G), striking "Council" and inserting "Board", and striking "under paragraph (2)(E)" and inserting "under paragraph (7)(B)";

(F) in subparagraph (H)--

(i) in the heading, striking "SUBCOMMITTEE." and inserting "BOARD.";

(ii) in clause (i), striking "under paragraph (2)(E)" and inserting "to the Board" and striking "Subcommittee" and inserting "Board";

(G) in subparagraph (I)--

(i) in paragraph (i), striking "under paragraph (2)(E)" and inserting "to the Board" and striking "Subcommittee" and inserting "Board"; and

(ii) in paragraph (ii), striking "under paragraph (2)(E)" and inserting "to the Board", and striking "Subcommittee" and inserting "Board";

(H) in subparagraph (K), inserting "or Board" after "Council"; and

(I) in subparagraph (L), inserting "or Board" after "Council" both times it appears; and

(5) in paragraph (7) by--

(A) in the heading, striking "SUBCOMMITTEE." and inserting "BOARD.";

(B) revising subparagraph (A) to read as follows:

"(A) ESTABLISHMENT.--Upon enactment of the Centennial of Flight Aviation Authorization Act, the Administrator shall convert the Air Traffic Services Subcommittee of the Management Advisory Council to an advisory board that is independent of the Council, to be known as the Air Traffic Services Board (in this subsection referred to as the "Board").

(C) redesignating paragraphs (B) through (F) as paragraphs (D) through (H), and inserting new paragraphs (B) and (C) as follows:

"(B) MEMBERSHIP AND QUALIFICATIONS.—The Board shall consist of 5 members, one of whom shall be the Administrator, who shall serve as chairperson. The remaining members shall be appointed by the Secretary and shall—

"(i) have a fiduciary responsibility to represent the public interest;

"(ii) be citizens of the United States;

"(iii) be appointed without regard to political affiliation and solely on the basis of their professional experience and expertise in one or more of the following areas:

"(I) management of large service organizations;

"(II) customer service;

"(III) management of large procurements;

"(IV) information and communications technology;

"(V) organizational development; or

"(VI) labor relations.

"At least one of the appointed members should have a background in managing large organizations successfully. In the aggregate, such members should collectively bring to bear expertise in all of the areas described in subclauses (I) through (VI).

“(C) PROHIBITIONS ON MEMBERS OF BOARD.—No member appointed to the Board by the Secretary may—

“(i) have a pecuniary interest in, or own stock in or bonds of, an aviation or aeronautical enterprise, except an interest in a diversified mutual fund or an interest that is exempt from the application of section 208 of title 18;

“(ii) engage in another business related to aviation or aeronautics; or

“(iii) be a member of any organization that engages, as a substantial part of its activities, in activities to influence aviation-related legislation.”;

(D) in paragraph (D)(i), as redesignated, by striking “Subcommittee” and inserting “Board”;

(E) in paragraph (E), as redesignated, by—

(i) striking “Subcommittee” and inserting “Board”; and

(ii) in subparagraphs (i), (ii) and (iv), striking “approve” each time it appears and inserting “make recommendations on”;

(iii) in subparagraph (v), by—

(I) in subclause (I), striking “approve” and inserting “make recommendations on”, and striking “Administrator” and inserting “Administrator, within the overall budget level proposed by the Administration”;

(II) in subclause (II), striking “request” and inserting “recommendations”;

(III) in subclause (III), striking “ensure that the budget request supports” and inserting “base such budget recommendations on”; and

(IV) striking the undesignated sentence beginning with “The Secretary shall submit” through to the end of paragraph (v);

(F) by revising paragraph (F), as redesignated, to read as follows:

“(F) BOARD PERSONNEL MATTERS.—The Board, through its Chairman, may appoint and terminate any personnel that may be necessary to enable the Board to perform its duties, and may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.”;

(G) in paragraph (G), as redesignated, by--

(i) striking clause (i) and redesignating clauses (ii), (iii) and (iv) as clauses (i), (ii) and (iii), respectively; and

(ii) in clauses (i), (ii) and (iii) as redesignated, striking "Subcommittee" and inserting "Board" wherever it appears;

(H) in paragraph (H), as redesignated, by--

(i) striking "Subcommittee" and inserting "Board" wherever it appears;

(ii) in clauses (i) and (ii), striking "Administrator, the Council" and inserting "Secretary" both times it appears; and

(I) by inserting a new paragraph (I) as follows:

"(I) AUTHORIZATION.—There is authorized to be appropriated to the Secretary for the Air Traffic Services Board such sums as may be necessary for the Board to carry out its activities."

#### **SEC. 504. CLARIFICATION OF THE RESPONSIBILITIES OF THE CHIEF OPERATING OFFICER.**

Subsection (r) of section 106 is amended--

(1) in paragraphs (1)(A) and (2)(A), by striking "Air Traffic Services Subcommittee of the Aviation Management Advisory Council" and inserting "Air Traffic Services Board" both times it appears;

(2) in paragraph (3), by--

(i) striking "Air Traffic Services Subcommittee of the Aviation Management Advisory Council" and inserting "Air Traffic Services Board"; and



(3) in paragraph (4), by striking "Transportation and Congress" and inserting "Transportation, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate,"; and

(4) in paragraph (5), by--

(i) in subparagraph (A)--

(I) striking "develop a" and inserting "implement the"; and

(II) striking "including the establishment of--" and inserting "in order to further--";

(ii) in subparagraph (B), by revising the introductory sentence to read "To oversee the day-to-day operational functions of the Administration for air traffic control, including--";

(iii) in clause (C)(i), striking "prepared by the Administrator";

(iv) in clause (C)(ii), striking "and the Secretary of Transportation"; and

(v) in clause (C)(iii)--

(I) inserting "agency's" before "annual"; and

(II) striking "developed under subparagraph (A) of this subsection." and inserting "for air traffic control services."

## **Title VI--AVIATION INSURANCE**

### **SECTION 601. ENDING EFFECTIVE DATE.**

The text of section 44310 is amended to read as follows:

"Effective December 31, 2005, the authority of the Secretary of Transportation to provide insurance and reinsurance under this chapter is limited to (1) operation of an American aircraft or foreign-flag aircraft in foreign air commerce or between at least two places, all of which are outside the United States; and (2) insurance obtained by a

department, agency, or instrumentality of the United States Government under section 44305 of this title."

## **TITLE VII – SMALL COMMUNITY TRANSPORTATION SERVICE**

### **SEC. 701. IMPROVEMENTS TO SMALL COMMUNITY TRANSPORTATION SERVICE.**

(a) General.--Effective October 1, 2004, Subchapter II of Chapter 417 is revised to read as follows:

#### **"SUBCHAPTER II--SMALL COMMUNITY TRANSPORTATION SERVICE**

**"Sec. 41731. Definitions**

**"(a) General.--In this subchapter--**

**"(1) 'eligible place' means a place in the United States that--**

**"(A) agrees to contribute toward the compensation cost of the essential transportation service authorized as set forth in this subchapter; and**

**"(B)(i) was an eligible point under section 419 of the Federal Aviation Act of 1958 before October 1, 1988;**

**"(ii) received scheduled air transportation at any time after January 1, 1990;**

"(iii) is not listed in Department of Transportation Orders 89-9-37 and 89-12-52 as a place ineligible for compensation under this subchapter; and

"(iv) as of October 1, 2003, was not determined to be ineligible for Essential Air Service compensation because the community is fewer than 70 highway miles from a hub airport or the compensation cost per passenger exceeds \$200; or

"(C) was determined, on or after October 1, 1988, and before April 5, 2000, under this subchapter by the Secretary of Transportation to be eligible to receive subsidized small community air service and, as of October 1, 2004, was not determined to be ineligible for Essential Air Service subsidy because the community is fewer than 70 highway miles from a hub airport or the compensation cost per passenger exceeds \$200.

"(2) 'enhanced essential transportation service' means transportation to an eligible place of a higher level or quality than essential transportation service, as specified in section 41732 of this title.

"(3) 'hub airport' means an airport that each year has at least 0.25 percent of the total annual boardings in the United States.

"(4) 'non-hub airport' means an airport that each year has less than 0.05 percent of the total annual boardings in the United States.

"(5) 'small hub airport' means an airport that each year has at least 0.05 percent, but less than 0.25 percent, of the total annual boardings in the United States.

"Sec. 41732. Essential transportation service

"(a) General.--Essential transportation service provided under sections 41732 and 41733 of this title consists of transportation of passengers and cargo to a destination airport that has convenient connecting or single-plane air service to a number of destinations.

"(b) Essential Transportation Service Levels and Types.--(1)The Secretary of Transportation, after consultation with the affected community and the appropriate State authority of the State in which the community is located, shall determine the level of service under this section that constitutes essential transportation service to the community.

"(2) Service provided under this section may consist of any one or more elements of regularly scheduled air service, surface transportation, single-engine, single-pilot operations, charter service, or regionalized service.

"(c) Limit on Type of Essential Transportation Service Provided.--An eligible place qualifies for compensation for any of the service elements specified in subsection (b), except that an eligible place does not qualify for compensation for air transportation if it is located within--

"(A) 100 highway miles of a hub airport;

"(B) 75 highway miles of a small hub airport; or

"(C) 50 highway miles of a non-hub airport with jet service.

"Sec. 41733. Selection criteria and availability of compensation

"(a) General.-- If the Secretary of Transportation decides that essential transportation service will not be provided to an eligible place without compensation, the

Secretary shall provide notice that a person may apply to provide essential transportation service to the place for compensation under this section. In selecting an applicant, the Secretary may consider, among other factors--

"(1) the demonstrated reliability of the applicant in providing transportation service;

"(2) the contractual and marketing arrangements the applicant has made with an air carrier to ensure service beyond the destination airport;

"(3) the interline arrangements that the applicant has made with a carrier to allow passengers and cargo of the applicant at the destination airport to be transported by the carrier through one reservation, ticket, and baggage check-in;

"(4) the preferences of the actual and potential users of transportation at the eligible place, giving substantial weight to the views of the elected officials representing the users; and

"(5) the compensation cost to the Department based on the applicant's proposal.

"(b) Compensation Contribution Requirements.--(1) An eligible place may receive compensation for essential transportation service under this subchapter only if the place contributes a portion of the compensation determined by the Secretary under this section, as follows:

"(A) An eligible place located more than 210 highway miles from the nearest hub airport shall contribute not less than 10 percent.

"(B) An eligible place located fewer than 100 miles from a hub airport, 75 miles from a small hub airport, or 50 miles from a non-hub airport with jet service shall contribute not less than 50 percent.

"(C) Any other eligible place shall contribute not less than 25 percent;

"(2) Notwithstanding paragraphs (1)(B) and (1)(C), an eligible place is not eligible for compensation for essential transportation service under this subchapter if the compensation cost exceeds \$200 per passenger.

"(c) Guidelines for Payments.--The Secretary shall pay compensation for providing essential transportation service under this section and section 41734 of this title under guidelines specified under section 41736(a) of this title.

"(d) Compensation Payments.--The Secretary shall pay compensation under this section at times and in the way the Secretary decides is appropriate. The Secretary shall end payment of compensation to a person for providing essential transportation service to an eligible place when the Secretary decides the compensation is no longer necessary to maintain essential transportation service to the place.

"(e) Review.--The Secretary shall review periodically the level of essential transportation service for each eligible place. Based on the review and consultation with an affected community and the appropriate State authority of the State in which the community is located, the Secretary may make appropriate adjustments in the level of service.

"Sec. 41734. Ending, suspending, and reducing essential transportation service

"(a) Notice Required.--A person may end, suspend, or reduce service to an eligible place below the level of essential transportation service established for that place under this subchapter only after giving the Secretary of Transportation, the appropriate State authority, and the affected communities at least 90 days' notice before ending, suspending, or reducing that transportation.

"(b) Continuation of Service for 30 Days After Notice Period.--If at the end of the notice period under subsection (a) of this section the Secretary has not found another person to provide essential transportation service to the eligible place, the Secretary shall require the person providing notice to continue to provide essential transportation service to the place for an additional 30-day period or until another person begins to provide essential transportation service to the place, whichever occurs first.

"(c) Continuation of Service for Additional 30-Day Periods.--If at the end of the 30-day period under subsection (b) of this section the Secretary decides another person will not provide essential transportation service to the place on a continuing basis, the Secretary shall require the person providing service to continue to provide service for additional 30-day periods until another person begins providing service on a continuing basis. At the end of each 30-day period, the Secretary shall decide if another person will provide service on a continuing basis.

"(d) Continuation Of Compensation After Notice Period.--If a person receiving compensation under this subchapter for providing essential transportation service to an eligible place is required to continue to provide service to the place under this section after the 90-day notice period under subsection (a) of this section, the Secretary shall continue to pay that compensation after the last day of that period. The Secretary shall pay the compensation until the Secretary finds another person to provide the service to the place, or until the 180th day after the person filed notice to suspend service, whichever occurs earlier. If, after the 180th day, the Secretary has not found another person to provide the service, the person required to continue to provide that service shall receive compensation sufficient to pay for the fully allocated actual cost to the person of performing the essential transportation service that was being provided when the 90-day notice was given under subsection (a) of this section, plus a return on investment that is equal to 5 percent of operating costs.

"(e) Compensation to Persons Originally Providing Service Without Compensation.--If the Secretary requires a person providing essential transportation

service to an eligible place without compensation under this subchapter to continue providing that service after the 90-day notice period required by subsection (a) of this section, the Secretary shall provide the person with compensation after the end of the 90-day notice period that is sufficient to pay for the fully allocated actual cost to the person of performing the essential transportation service that was being provided when the 90-day notice was given under subsection (a) of this section plus a return on investment that is equal to 5 percent of operating costs.

"(f) Requirement for Continued Eligibility.--With respect to all compensation provisions set forth in this section, the Secretary shall make compensation payments only to the extent that the place continues to meet the eligibility requirements set out in section 41733(b) and the compensation is consistent with section 41736 of this subchapter.

"(g) Finding Replacement Service Providers.--When the Secretary requires a person to continue to provide essential transportation service to an eligible place, the Secretary shall promptly issue a request for proposals to find another person to provide at least the essential transportation service set forth in section 41732 to the place on a continuing basis.

"Sec. 41735. Enhanced essential transportation service

"(a) Proposals.--(1) A State or local government may submit a proposal to the Secretary of Transportation for enhanced essential transportation service to an eligible place for which essential transportation service is being provided under section 41732 of this title. The proposal shall--

(A) specify the level and type of enhanced essential transportation service the State or local government considers appropriate; and

"(B) include an agreement related to compensation required for the proposed service.



"(2) The agreement submitted under paragraph (1)(B) of this subsection shall provide that--

"(A) the State or local government or a person pay not less than 50 percent of the incremental cost of compensation required for the proposed enhancement and the Secretary pay the remaining share; or

"(B)(i) the Secretary pay 100 percent of the incremental cost of the compensation; and

"(ii) if the proposed enhanced service is not successful for at least a 2-year period, the eligible place is no longer eligible for essential transportation service for which compensation is paid by the Secretary under this subchapter.

"(b) Decisions. After receiving a proposal under subsection (a) of this section, the Secretary shall --

"(1) approve the proposal if the Secretary decides the proposal is reasonable; or

"(2) if the Secretary decides the proposal is not reasonable, disapprove the proposal and notify the State or local government of the disapproval and the reasons for the disapproval.

"(c) Compensation Payments.--(1) The Secretary shall pay compensation under this section when and in the way the Secretary decides is appropriate. Compensation for enhanced essential transportation service under this section may be paid only for the costs incurred in providing service to an eligible place that are in addition to the costs incurred in providing essential transportation service to the place under sections 41732, and 41733

of this title. The Secretary may continue to pay compensation under this section only as long as--

"(A) the service provider maintains the level of enhanced essential transportation service;

"(B) the State or local government or person agreeing to pay compensation under this section continues to pay the compensation;

"(C) the Secretary decides the compensation is necessary to maintain the service to the place; and

"(D) service to the point meets the requirements of sections 41733(b) and 41736 of this title.

"(2) The Secretary may require the State or local government or person agreeing to pay compensation under this section to make advance payments or provide other security to ensure that timely payments are made.

"(d) Review.--(1) The Secretary shall review periodically the enhanced essential transportation service provided to each eligible place under this section.

"(2) For service described in subsection (a)(2)(A) of this section, the Secretary shall make appropriate adjustments in the type and level of service to the place.

"(3) For service described in (a)(2)(B) of this section, the Secretary shall determine whether the service has succeeded for at least a 2-year period. If the Secretary determines that the service is unsuccessful, or if the service provider or the place files notice to terminate the service within the 2-year period, the place will no longer be eligible for service for which compensation is paid by the Secretary under this subchapter.

"(e) Ending, Suspending, and Reducing Transportation.--A person may end, suspend, or reduce transportation to an eligible place below the level of enhanced essential transportation service established for that place by the Secretary under this section only after giving the Secretary, the affected community, and the State or local government or person paying compensation for that service at least 30 days' notice before ending, suspending, or reducing the service. This subsection does not relieve the person of an obligation under section 41734 of this title.

"41736. Compensation guidelines, limitations, and claims

"(a) Compensation Guidelines.-- The Secretary of Transportation shall prescribe guidelines governing the rate of compensation payable under this subchapter. The guidelines shall be used to determine the reasonable amount of compensation required to ensure the continuation of air service or air transportation under this subchapter. The guidelines shall--

"(1) provide for a reduction in compensation when the transportation provider does not provide service or transportation agreed to be provided;

"(2) consider amounts needed by the transportation provider to promote public use of the service or transportation for which compensation is being paid; and

"(3) include expense elements based on representative costs of providers of transportation of passengers, property, and mail on equipment of the type the Secretary decides is appropriate for providing the service or transportation for which compensation is being provided.

"(b) Claims.--Not later than 20 days after receiving a written claim from a person for compensation under this subchapter, the Secretary shall--

"(1) pay or deny the United States Government's share of a claim; and

"(2) if denying the claim, notify the person of the denial and the reasons for the denial.

"(c) Authority to make agreements and incur obligations.--(1) An agreement by the Secretary under this subsection is a contractual obligation of the Government to pay the Government's share of the compensation.

"(2) In making a determination on eligibility for compensation under this subchapter, the Secretary--

"(A) shall rank all compensated points in their order of relative decreasing highway distance from the nearest hub airport or small hub airport, recognizing that a small hub airport provides less connection to the national air transportation system than does a hub airport. As used in this subchapter, 'highway distance' means the shortest distance by highway as determined by the Federal Highway Administration; and

"(B) shall provide compensation first to the most isolated community, as determined in subparagraph (A), that requires compensation and then the next most isolated community requiring compensation, in order of isolation, until the Secretary has obligated not more than the amounts received by the Federal Aviation Administration under section 45301(a)(1) and credited to the account established under section 45303 of this title in the prior fiscal year, which amounts shall remain available until expended.

"(3) If a community requires compensation after the Secretary makes the determinations in paragraphs (1) and (2) of this subsection, the Secretary shall determine the community's eligibility for compensation in accordance with those paragraphs, making whatever recalculations are required. In making recalculations, the Secretary

may deny compensation for any time in the future to any community already receiving compensation.

"(4) In order to receive compensation under this subchapter for essential transportation service, the community must be willing and able to contribute to the cost of the total compensation cost as set forth in section 41733(b) of this title.

"Sec. 41737. Transportation initiatives for eligible and non-eligible places

"(a) Proposals and Decisions.--(1) A community, consortia of communities, or a state or local government may apply to the Secretary of Transportation for financial assistance to facilitate improvements to the community's air service or air fares if--

"(A) the community is, at the time of its application, no larger than a small hub; and

"(B) the community, state, and/or local government will contribute no less than 25 percent of the total cost of the proposed transportation initiative.

"(2) In deciding whether a proposal is reasonable, the Secretary shall consider, among other factors:

"(A) The traffic generating potential of the location.

"(B) The cost to the United States Government of participating in the proposed transportation initiative.

"(C) The distance of the location from the closest primary airport.

"(D) Whether air fares are higher than the average air fares for all communities.

"(E) Whether the community or consortium has established, or will establish, a public/private partnership to facilitate air carrier service, or access to air carrier service, to the public.

"(F) Whether the assistance will provide material benefits to a broad segment of the traveling public, including business, educational institutions, and other enterprises, whose access to the national air transportation system is limited.

"(b) Types of Assistance.--The Secretary may make funds available to communities under this section to--

"(1) subsidize an air carrier for service to and from the community for a period not to exceed 3 years;

"(2) provide assistance to the community to obtain transportation service to and from the community that will provide it access to the national air transportation system; and

"(3) provide assistance to the community to implement such other measures as the Secretary, in consultation with the community, considers appropriate, to improve air service both in terms of the cost of service to consumers and the availability of service, including improving air service through marketing and promotion of air and surface service and enhanced use of airport facilities.

"(c) Approval of Transportation Initiatives.--The Secretary may provide financial assistance to applicant communities for transportation initiatives that meet the requirements of this section to the extent that funds are available.

"Sec. 41738. Transportation provider obligations

"If at least two transportation providers make an agreement to operate under or use a single carrier designator code to provide the transportation authorized under this subchapter, the carrier whose code is being used shares responsibility with the other carriers for the quality of transportation provided the public under the code by the other carriers.

"Sec. 41739. Joint proposals

"The Secretary of Transportation shall encourage the submission of joint proposals by 2 or more transportation providers under this subchapter through arrangements that maximize the service or transportation to and from major destinations beyond the destination airport.

"Sec. 41740. Essential transportation service authorization

"The amounts received by the Federal Aviation Administration under section 45301(a)(1) and credited to the account established under section 45303 of this title in the prior two fiscal years, which amounts shall remain available until expended, are authorized and shall be made available immediately for obligation and expenditure during any two-fiscal year period to carry out the essential transportation service program under this subchapter for each fiscal year."

(b) Conforming Amendment.--(1) Effective October 1, 2004, the table of sections for chapter 417 is amended by striking the items relating to Subchapter II and substituting the following:

"SUBCHAPTER II—SMALL COMMUNITY TRANSPORTATION SERVICE

"Sec.

"41731. Definitions.

- "41732. Essential transportation service.
- "41733. Selection criteria and availability of compensation.
- "41734. Ending, suspending, and reducing essential transportation service.
- "41735. Enhanced essential transportation service.
- "41736. Compensation guidelines, limitations, and claims.
- "41737. Transportation initiatives for eligible and non-eligible places.
- "41738. Transportation provider obligations.
- "41739. Joint proposals.
- "41740. Essential transportation service authorization."

(2) Effective October 1, 2004--

(A) section 40109(f)(3)(B) is amended by striking ", including the minimum transportation requirement for Alaska specified under section 41732(b)(1)(B) of this title";

(B) section 41110(a)(2)(B) is amended by striking "41731-41742" and substituting "41731-41740"; and

(C) section 41714(h) is amended by striking "and 41734(h)".

(c) Savings Provision.--Proceedings undertaken prior to October 1, 2004, including actions of the Secretary of Transportation, under the authority of Subchapter II of chapter 417 of title 49, United States Code, shall be administered without regard to the amendments made by this section.

## **Title VIII-- INTERNAL REVENUE CODE AMENDMENTS**

### **SEC. 801. EXTENSION OF EXPENDITURE AUTHORITY.**



Section 9502 of the Internal Revenue Code of 1986 (relating to expenditures from the Airport and Airway Trust Fund) is amended--

(1) in paragraph (d)(1), by--

(A) striking "October 1, 2003," and inserting "October 1, 2007";

and

(B) inserting before the semicolon at the end of subparagraph (A) the following: "or the Centennial of Flight Aviation Authorization Act".

(2) in paragraph (f)(2), by striking "October 1, 2003," and inserting "October 1, 2007,".

## **Section-by-Section Analysis**

**Sec. 1. Title.** This section provides that the Act may be cited as the "Centennial of Flight Aviation Authorization Act," and contains the table of contents for the bill.

**Sec. 2. Title 49 Reference.** This section provides that, except where otherwise expressly provided, any references to sections or provisions are made to title 49, United States Code.

**Sec. 3. Effective Date.** This section provides that, unless otherwise stated, the amendments made by this Act are effective upon enactment.

## **Title I--Authorizations**

**Sec. 101. OPS Authorization.** Subsection (a) of this section provides an authorization for the Federal Aviation Administration (FAA) Operations account (renaming that account the Salaries, Operations and Maintenance Account) for fiscal years 2004 through 2007.

This section would also provide for a specific contribution to the Operations account over the term of the reauthorization. This would allow the trust fund to cover 79 percent of the FAA operations and maintenance appropriation over the four-year authorization period, and is higher than the Trust Fund/General Fund split during the three years of AIR-21. Under this proposal, the uncommitted balance in the Trust Fund would drop from \$4.6 billion at the end of FY 2003 to \$1.1 billion at the end of FY 2007. The overall cash balance in the Trust Fund at the end of the period would still be \$8.9 billion.

Subsection (b) provides an authorization to fund the airline data and analysis activities of the Department's Bureau of Transportation Statistics.

**Sec. 102. F&E Authorization.** This section provides an authorization for the FAA Facilities and Equipment (F&E) program for fiscal years 2004 through 2007. Paragraph (c) of this section would correct an unintended consequence of certain funding constraints under FAA's budget accounts. Historically, FAA has been permitted to use only appropriated Research, Engineering, and Development (R,E&D) funds for grants. When Congress moved some of the agency's air traffic service related research programs to what was then known as "F&E, Activity 1" in fiscal year 1999, the unintended result was that the FAA could not use either R,E&D funds or F&E funds for needed air traffic service related research grants, thus essentially limiting Air Traffic Control (ATC) related research grants to only work in human factors and weather forecasting. More flexibility in using F&E funds is needed to support applied research activities for modernizing the air traffic control system. Paragraph (c) would authorize the FAA to support research using F&E funds for applied and developmental research activities related to programs funded within the F&E.

**Sec. 103. R,E&D Authorization.** This section provides an authorization for the FAA Research, Engineering, and Development (R,E&D) program for fiscal years 2004 through 2007.

**Sec. 104. AIP Authorization.** This section specifies contract authority levels through FY 2007 for Airport Improvement Program (AIP) grants and extends the authority to make AIP grants from the Airport and Airway Trust Fund through FY 2007.

## **Title II--Amendments to Aviation Law**

**Sec. 201. Clarification of FAA Authority with Respect to Phase-Out of Slot Rules.** This provision would amend section 41715 to add language clarifying the FAA's authority with respect to the effect of existing sections 41715, 41716 and 41717 requiring the phase-out of the High Density Rule (HDR) at LaGuardia, JFK International Airport, and Chicago O'Hare International Airport. This clarification provides that if the Administrator finds it necessary to ensure the safety of aircraft and the efficient use of airspace, then the Administrator retains the authority to issue new regulations limiting the time and number of operations at those airports. Such authority parallels FAA's authority under section 40103 over use of the airspace. While the amendment would permit the agency to consider the full range of available demand management options, it does not itself reinstate the High Density Rule or otherwise automatically preserve the status quo. For example, to consider the available options the FAA has issued a notice requesting public comment on several demand management alternatives at LaGuardia Airport, including both administrative and market-based approaches. The Department will use those comments and its own study results to determine possible options for replacing or revising existing demand management measures.

**Sec. 202. Procurement.** Subsection (a)(1) removes obsolete references in current law by deleting subparagraphs granting the Administrator authority under certain statutes (the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) and the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253)), that, because of procurement reform, no longer apply to FAA acquisitions. In addition, the amendment clarifies that the acquisition management system used by FAA must provide for more timely and cost-effective acquisitions of services as well as equipment and materials. The amendment also deletes the compliance date of January 1, 1996, which is now obsolete since the FAA has implemented the system.

Subsection (a)(2) of this section would amend paragraph (d)(1) of section 40110 to remove any ambiguity as to the applicability of section 46110 to judicial review of the Administrator's final decisions on bid protests and contract disputes. Although there have not been any jurisdictional challenges in the procurement area, as described in section 407 of this bill, one recent decision interpreting section 46110, City of Alameda v. FAA, 285 F.3d 1143 (9<sup>th</sup> Cir. 2002), may have created an ambiguity that applies to procurement disputes as well as disputes concerning Airport Improvement Program grants. This amendment will eliminate any ambiguity and confirm that these disputes

should be resolved using alternative dispute resolution techniques to the extent practicable.

**Sec. 203. Cost-sharing.** This section would provide permanent authorization for a successful pilot program that was enacted as part of AIR-21 (see section 304 of Pub.L. 106-181, Apr. 8, 2000) to encourage non-Federal investment in critical air traffic facilities and equipment. The 3-year pilot program allowed for cost sharing between FAA and airports or joint ventures of airports and air carriers, of not more than 10 air traffic modernization projects. In FY'01, five cost share projects were awarded and five more were awarded in FY'02. The program allowed FAA to facilitate the modernization of the national airspace system (NAS) in areas where Federal funds were not available to meet all needs. Given the success of the program, section 203 would make the AIR-21 provision a permanent program under Chapter 445 of title 49, and propose several changes to its terms: limit the Federal share for each project to \$5 million instead of \$15 million thereby making the program more fiscally sound; expand the eligibility of those who may participate to any major user of the NAS (e.g. air carriers would not have to be in a joint venture with an airport in order to participate); permit the funding of up to 10 projects per fiscal year; and clarify that any facilities or equipment funded by the program that may be transferred to the FAA are transferred with the FAA's consent and meet FAA standards.

**Sec. 204. Counterfeit or Fraudulently Represented Parts.** This section would direct the FAA Administrator to deny the certification of a person who knowingly, and with the intent to defraud, carried out or facilitated an activity relating to counterfeit or fraudulently represented aviation parts or materials, and otherwise punishable by law. The person denied certification could be an individual or entity that itself carried out or facilitated such activity, or an entity subject to a controlling or ownership interest of an individual who carried out or facilitated such activity. This section would also direct the FAA Administrator to deny the certification of a person whose certificate had been previously revoked *for involvement in an activity relating to counterfeit or fraudulent parts*. With this amendment, the bases for certificate denial would be expanded to include those that are the bases for certificate revocation.

**Sec. 205. Civil Penalties.** This section would amend the general civil penalty provision of Subtitle VII of title 49, governing the civil penalties for violations of aviation law, to increase, and make uniform, the maximum civil penalty for each violation at \$25,000 per violation. The provision would affect penalties for both safety, civil rights, and economic violations.

Subsection (a). Under current law, violations of some provisions enforced by the FAA are subject to a \$1,000 civil penalty (those committed by individuals, airports, manufacturers, aircraft maintenance facilities, etc.) and others (those committed by air carriers) are subject to a \$10,000 penalty.\* The increased level is needed to make the

---

\* Although the \$1,000 and \$10,000 penalties are set in statute, under government-wide authority, the FAA may adjust these levels for inflation. Currently, the FAA has adjusted those penalties to \$1,100 and \$11,000, respectively.

penalty for violations more effective and to bring it more in line with recent enactments. For example, in AIR-21, the penalty for "air rage" violations was set at \$25,000 (see section 511 of Pub. L. 106-181, Apr. 5, 2000). Similarly, the penalty for violations of requirements for transportation of hazardous materials is now set at \$25,000.\*\* More recently in the Homeland Security Act of 2002 (see section 1602 of Pub. L. 107-296, Nov. 25, 2002), the maximum penalty for security violations by air carriers was also increased to \$25,000 (it was increased to a maximum of \$10,000 for non-air carrier violators).

The proposed language would also amend penalties for violations of provisions enforced by the Office of the Secretary. These provisions apply generally to the activities of commercial air carriers. Among the enforcement responsibilities relating to the economic regulation of air carriers are the enforcement of (1) restrictions on the extent of air carrier's operations; (2) the reporting of required financial and traffic data; (3) prohibitions on unfair and deceptive trade practices; and (4) prohibitions of discriminatory treatment by air carriers of individuals based on race, ethnicity or disability. Under current law, there are a number of different civil penalties applicable to these kinds of violations. The general penalty provision of \$1,000 (raised to \$1,100 by regulation to reflect inflation) applies to most unauthorized operations and reporting violations; a penalty of \$2,500 applies to violations of 49 U.S.C. 41712 regarding unfair and deceptive trade practices; and a \$10,000 penalty applies to violations of 49 U.S.C. § 41705 relating to discriminatory treatment of disabled individuals, while a \$2,500 penalty applies to other forms of discrimination under 49 U.S.C. § 40127. As there is no justification for such disparate treatment, a uniform civil penalty of \$25,000 should apply to all violations of economic statutes or rules. The proposed language would, moreover, ensure that more serious violations of title 49, such as violations involving discriminatory conduct, are not subject to a lower maximum penalty than less serious infractions.

Apart from the matter of a uniform civil penalty amount, an additional clarification is needed with respect to current § 46301(a)(7). With its current wording, this section appears to exclude violations of § 40127 (referring to non-disability discrimination) and § 41712 (referring to unfair and deceptive trade practices) from the scope of § 46301(a)(4). The latter provision allows the Department to consider each day that a violation continues as a separate violation subject to the full civil penalty amount. As currently written, therefore, the statute seems to limit penalties for non-disability discrimination or unfair and deceptive trade practices to \$2,500, regardless of the duration of the violations. In the interests of consistency and to ensure adequate penalty levels for continuing civil rights and deceptive practices violations, the proposed section 205 would apply the terms of § 46301(a)(2), as renumbered, to those violations.

Subsection (b). Subsection (b) of this section would also remove the limitation on the FAA's authority to administratively determine a civil penalty. Currently, the FAA's authority is limited to \$50,000, (i.e. cases involving a finding of violations with civil penalties in excess of \$50,000 must be referred to the U.S. Attorney for prosecution). Removing this limitation on the FAA's administrative pursuit of violations will greatly

---

\*\*This amount has been adjusted for inflation and is now \$30,000.

enhance the agency's abilities to promptly dispose of serious aviation safety violations without having to rely on the United States Attorney's Offices to prosecute such cases.

**Sec. 206. Aviation Information Collection.** This amendment would remove the prohibition in current law, enacted in 1984, against collecting passenger or cargo data by flight number. The prohibition was considered necessary at that time to protect the competitive position of air carriers, but has not substantially encouraged competition and, in any case, is not effective. Air carriers can and do obtain their competitors' passenger and cargo data by flight number in other ways, including surveys, observations of traffic, and purchase of reservation data from private third parties (methodologies not available to DOT). DOT believes the prohibition is no longer necessary and that removal of this restriction will improve aviation data collection. It would enable DOT, through the Bureau of Transportation Statistics, to collect passenger and cargo data by flight numbers in order to calculate more accurately such performance measures as the number of passengers affected by flight delays, the average time required to travel on particular routes, the reliability of travel time for passengers, and the average fare paid by passengers. It would also be the basis for estimates for security screening needs, to monitor the collection of airline security fees, to improve allocation of FAA's safety inspector workforce, and the forecasts of air travel demand and requirements for air traffic control.

### **Title III--Airport Improvement Program Amendments**

**Sec. 301. Security Costs; Amendments to Definitions.** This provision reinstitutes assistance to nonhub airports to permit the airport to use its passenger or cargo apportionments on security related activities required by law or the Secretary. This section also repeals two provisions inserted by section 119 of the Aviation and Transportation Security ATSA in which the authority to issue obligations has expired. For clarification, this section also adds definitions to chapter 471 for terms referring to different categories of airports (large hub, medium hub, non-hub, small hub and general aviation)—terms already used in provisions throughout the chapter. It also clarifies the definition of passenger boardings in chapter 471 so that it is clear that the relevant time period being measured is the prior calendar year, and adds the same definition to chapter 401 for consistency.

**Sec. 302. Funding Flexibility.** This section aligns the uses of apportionments to nonprimary airports with those permitted for primary airports. Section (a) would permit these apportionments to be used at any other airport owned by the same sponsor; and would allow the sharing of apportionments by the transfer of the apportionment to another airport within the same state or geographical area. Section (b) would permit issuance of multiyear grants. Section (c) would permit using apportioned funds for work performed before the grant was issued. It also would expand eligibility in the applying apportionments to some aeronautical revenue producing areas at nonprimary airports, in order to increase airports' ability to be self-sustaining, if the airport sponsors agree that its airside needs are adequately financed. Section (d) would permit use of apportionments for public-use terminal development projects.

**Sec. 303. Intermodal Planning.** This section strengthens the intermodal development of the transportation system by requiring that airport system planning involving a large or medium-hub primary airport must specifically take into consideration relevant surface transportation and land use plans. The section also establishes a new grant assurance to require large and medium-hub primary airports to coordinate certain airport layout and master plan changes with metropolitan planning organizations (MPOs), and further requires the assessment of transportation and land use plans as a condition of project grant approval.

**Sec. 304. Airport Privatization.** The 1996 Reauthorization Act established the Airport Privatization Pilot Program to permit private companies to own, lease, manage, and develop public airports, as a way of exploring alternate means of generating sources of private capital for airport improvement and development. The amendments in this section seek to promote greater interest in the pilot program by making it more attractive to local governments without undermining the protections of federal policies on use of airport revenue and reasonable airport charges. Currently, three of the five slots for the program are open. Section 304 would eliminate the 65 percent airline approval requirement for exemptions from revenue diversion restrictions under section 47134(b)(1) for small-hub, non-hub and general aviation airports. This increases the incentive for sponsors of smaller airports to enter the privatization program while preserving existing checks on substantial diversion of airport funds at major airports.

This section would also define “air carriers,” for the purpose of section 47134 only, as Part 121 operators serving Part 139 certificated airports. Currently, use of the term “air carrier,” as defined in section 40102, gives a Part 135 air taxi/fixed base operator the ability to block a privatization initiative at a general aviation airport. Redefining “air carriers” for the purpose of section 47134 could also make it easier for large and medium-hub airports to gain air carrier approval by reducing the number of operators whose agreement is required.

Finally, section 304 would require air carrier approval or disapproval under section 47134(b)(1) within 60 days of the airport sponsor's submission of its application to the FAA. Under current law, proponents are required to obtain the affirmative approval of a majority of the air carriers. This amendment would allow large and medium-hub airports to be granted an exemption from revenue diversion requirements unless airlines vote to “veto” the proposed exemption, and thus would prevent carriers from blocking a privatization indefinitely simply by inaction.

**Sec. 305. Military Airport Program (MAP) Program Changes.** This section would increase the caps for MAP-eligible only work (terminals, parking lots, fuel farms, hangars and air cargo terminals) from \$7 million to \$10 million.

**Sec. 306. Innovative Finance.** The past two FAA reauthorization Acts have included an Innovative Finance Demonstration Program. Under AIR-21's program, up to 20 projects were authorized for different types of financing techniques, including payment of

interest, commercial bond insurance, flexible non-Federal matching requirements, and use of funds apportioned under section 47114 for the payment of principal and interest of terminal development for costs incurred before the date of the enactment of the authority. The majority of projects approved have involved the flexible non-Federal matching requirements although the other techniques have also been approved. Because the pilot programs have been successful, this section would make the flexible matching requirements a standard feature of AIP. In addition, for nonhub airports (airports that had less than 355,000 boardings for FY 2000), this section would make the "pilot program" permanent authority.

**Sec. 307. Apportionments.** AIR-21, amended chapter 471 of title 49 to double the amount of apportionments based on passengers boarding at airports if the AIP funding level was \$3.2 billion or greater. It also raised the minimum apportionment based on passengers to \$1 million, if AIP funding is at least \$3.2 billion. AIR-21 also established a general aviation-type apportionment to airports if the funding level is again at or above \$3.2 billion.

This section doubles apportionments based on passengers at small hub and nonhub primary airports, without regard for the AIP funding level. Apportionments for larger airports would revert to the pre-AIR-21 formula, rather than the conditional doubling that was provided under AIR-21. The section also would also remove the \$3.2 billion funding requirement for increasing to \$1 million the minimum apportionment based on passenger type. It also removes the funding level requirement from the general aviation apportionment. Finally, this section would guarantee unassigned State and insular area apportionments at \$320 million for each program year.

**Sec. 308. Discretionary Fund.** This section is reworded by eliminating the requirement for the 75 percent of discretionary funds to be given to primary and reliever airports for capacity, safety, security and noise. It also would simplify the computation of certain minimum amounts by basing their computation on the amount newly made available: not less than 9 percent for noise compatibility planning and programs and airport emissions reductions, an amount equal to 20 percent for nationally significant projects, 1 percent for any eligible project at any airport, and the remainder for small hub and smaller airports. This would eliminate the military airport program set-aside and the reliever set-aside (established in AIR-21), since FAA routinely provides assistance for these types of airports far in excess of the set-asides. This section would provide for a limited amount of the noise set-aside to be used for noise and emissions research.

**Sec. 309. Considerations in Making Discretionary Grants.** This section would eliminate the Small Airport Fund, which had been established by section 47116, for simplicity because the prior section 308 above, when enacted, would provide more funding than would have been available under the Small Airport Fund. Further, since this fund is directly affected by the amount of passenger entitlements at large and medium hub airports that collect a PFC, it would be prudent to sever the link between the amount available for small airports and the level of entitlements for medium and large hub airports, so that unintended reductions in the fund would not occur. The section would



also move the factors to be considered in making discretionary grants from section 47115 to a newly revised section 47116. Additional factors to be considered have been added to specify requirements for qualifying as a nationally significant project under the proposed set-aside.

**Sec. 310. Special Categories.** This section makes a conforming change to section 47117 to delete the subsection that establishes apportionments for certain categories—noise, military airports, and reliever airports. Under proposed section 308, the apportionments for the military airport program and for reliever airports would be eliminated, and the noise apportionment is continued, although amended.

**Sec. 311. Competition Plans.** A section of the bill is reserved to address refinement of existing competition plan provisions of law, and the Department expects to communicate further with Congress on this topic.

**Sec. 312. PFC Streamlining.** This section would amend current consultation requirements with air carriers to require consultation only with those carriers whose passengers will be charged a PFC. It also would delete the requirement for significant contribution tests since previous requirements are deemed adequate and the current requirement creates complicated collection schedules. This section also establishes a pilot program for smaller airports to implement a fee unless Secretary overrules such action.

**Sec. 313. Miscellaneous Amendments.**

- Subsection (a) restates the definition of the phrase “amount made available under section 48103 of this title” in section 47102(6) for clarity. It also adds a definition of the phrase “amount subject to apportionment” to mean that amount for a fiscal year that represents the (total) “amount newly made available” less the amount authorized for administrative expenses. This phrase would therefore represent the amount on which grant computations will be based, as well as indicating the purposes for which grants may be made (by reference to section 48103 through the definition of “amount newly made available”). Because several sections in chapter 471 refer to this amount, the new definition is added to the list of subchapter-wide definitions in section 47102(7), and the current definition of “amount subject to apportionment” in section 47114(a), which limits itself to that section, is deleted (see amendment under (b)(4) of this section).
- Subsection (b) makes a number of conforming amendments to language in various sections of chapter 471, including provisions that refer to this amount by using some variant of the phrase “amount made available”. These various terms would be replaced by the phrase “amount subject to apportionment,”.
- Subsection (c) is a clarification of current law and longstanding administrative practice. When the Government recovers an amount by canceling or reducing a prior grant, the recovered amount is considered to be a negative obligation in the fiscal year in which it is recovered, and is to be netted against the gross obligation limitation for that year. This can result in an equal amount being available for obligation above the gross obligation limitation for that year.

- Subsection (d) permits use of AIP funds for safety data collection and that recipient of the grant may be a private company. The safety data provides information that is useful for AIP funding and airport planning decisions. Not all states collect such data, and a private entity may be able to fill in any gaps that exist.
- Subsection (e) codifies annual appropriation mechanism to use AIP funds for FAA's administrative expenses for airport-related activities. Also, expands provision to include airport-related research activities.
- Subsection (f) extends design-build pilot program since some slots remain unused under the original program.
- Subsection (g) expands a statute of limitation provision involving revenue use to other local governments. When a sponsor contributes capital or subsidizes airport operations, existing law allows the sponsor to claim reimbursement for such contributions within 6 years of occurrence. This amendment would extend this policy to other governmental entities in order to recognize that such entities also contribute capital or operating costs to airports.
- Subsection (h) clarifies the review of revenue use through the annual audit activities under the Single Audit Act. Current law, 49 USC 47107(m), requires the FAA to regulate in an area that has historically been overseen by the Office of Management and Budget (OMB). OMB's exclusive authority is intended to ensure auditing consistency across all Federal agencies. The proposed amendments to 47107(m) will correct this situation by replacing language directing FAA to promulgate regulations with language referencing FAA's appropriate compliance role, while still maintaining Congress' intent that Single Audits include a review of the use of airport revenues.
- Subsection (i) updates a provision in the Aviation Safety and Noise Abatement Act of 1979, recodified as section 47503, to conform language to the original congressional intent of the provision that the forecast year for airport noise exposure maps should reflect conditions at least five years into the future. The current language, stating that "1985" is the five-year forecast timeframe, is outdated.
- Subsection (j) would amend section 40117 to clarify that passengers on military charters of commercial aircraft are not subject to collection of a passenger facility fee.
- Finally, subsection (k) would amend section 47110 to clarify that the allowable costs of an AIP project includes the costs of relocating any Federal facilities necessary to implement the project.

#### **Title IV--Environmental Provisions**

**Sec. 401. Environmental Review.** There are two provisions under this general heading. The first provision establishes new authority for the Administrator to designate aviation safety projects for priority environmental reviews. This would include priority coordination with other Federal and state agencies, with a reporting system by the Secretary for failure of an agency to comply with the priority review. The second

provision provides for Federal agencies to give substantial deference to the project purpose and need as defined by the Secretary when conducting an environmental review or issuing an environmental permit, license, or approval for an aviation safety or aviation congestion project. It would also establish a coordinated agency review process for projects designated by the Secretary, including provisions for an interagency environmental impact statement team and substantial deference to the Administrator's aviation expertise regarding reasonable project alternatives, relevant aviation factors (e.g., congestion or delay) and analytical methods for calculating aviation noise and emissions.

**Sec. 402. Governor's Certificate.** This section deletes the requirement for a Governor's air and water quality certification that was included in airports legislation in 1970 and is currently duplicative of protections in the Clean Air Act and Clean Water Act.

**Sec. 403. Low Emission Airport Vehicles and Infrastructure.** This section and section 404 below comprise new air quality initiatives to reduce aviation emissions and relieve constraints on aviation growth due to adverse air quality impacts. This section expands the eligibility for AIP and PFC for the acquisition or conversion of airport-owned vehicles and airport-owned ground support equipment to low emission technology, for infrastructure to support low emission airport vehicles, for gate electrification, and other related air quality improvements at commercial service airports in nonattainment and maintenance air quality areas. The section includes a provision for the Secretary to work with the EPA Administrator to develop an agreement, with specified conditions, on how airports will receive emission credits for voluntary emission reductions. The provision would require appropriate credits as a condition for AIP funding. Finally, a pilot program is proposed at not more than 10 commercial service airports to fund the retrofit of conventionally fueled airport ground support equipment using emission control technologies in order to evaluate the benefit-cost of such retrofits.

**Sec. 404. Low Emission Ground Support Equipment.** This section permits the use of PFC revenue, but not AIP, for the incremental cost of the acquisition or conversion of ground support equipment or airport-owned vehicles to low emission technology or cleaner burning conventional fuels, at commercial service airports in nonattainment or maintenance air quality areas. PFC funding would be conditioned on the provision of appropriate emission credits to the airport, as in section 403. PFC could also be used for conventional fuel retrofitting with certified emission control technologies.

**Sec. 405. National Air Tour Act Clarification.** The National Parks Air Tour Management Act of 2000 (NPATMA), enacted as part of AIR-21, sets forth requirements for managing commercial air tours over the nation's national parks, with the exception of the Grand Canyon National Park, which is governed by separate legislation. There has been some confusion over the distinction between tour operations that are regulated under NPATMA and those regulated under the Grand Canyon legislation. The NTSB has recommended that this situation be clarified. Accordingly, this section would amend 49 U.S.C. 40128 to eliminate confusion and to make more uniform the terminology used throughout that provision for "commercial air tour operations over a national park".

**Sec. 406. Judicial Review.** This provision would amend the judicial review provision in chapter 461 to clarify that decisions to take actions authorizing airport development projects are reviewable in the circuit courts of appeals under section 46110, notwithstanding the nature of the petitioner's objections to the decision. This provision would also clarify that FAA orders pertaining to airport compliance are exclusively reviewable in the circuit courts of appeals, like other orders issued under similar provision in Part B of subtitle VII of title 49. It would also clarify that orders of the Transportation Security Administration under 49 U.S.C. 114(s) (relating to nondisclosure of security activities) are similarly treated. The amendment is necessary because of a recent court decision that, in FAA's view, wrongly interpreted current law.

The amendment would resolve the jurisdictional issue in City of Alameda v. FAA, 285 F.3d 1143 (9<sup>th</sup> Cir. 2002) to reflect the holding in Suburban O'Hare Comm'n v. Dole, 787 F.2d 186 (7<sup>th</sup> Cir. 1986) and its progeny. Until City of Los Angeles v. FAA, 239 F.3d 1033 (9<sup>th</sup> Cir. 2001) and City of Alameda, it was settled law that FAA decisions that included approval of airport layout plans were exclusively reviewable in the circuit courts of appeals. The leading case in this area, Suburban O'Hare, held that the circuit court of appeals had exclusive jurisdiction under 46110 to review FAA's decision authorizing approval of the airport layout plan and other actions to support new runways and related development at Chicago's O'Hare airport. The court reasoned that when an agency decision has two distinct bases, one of which provides for exclusive jurisdiction in the courts of appeals, the entire decision is reviewable exclusively in the appellate court.

Section 406 would ensure that such long-held view is reflected in statute, and avoid the gross inefficiency in the judicial review of FAA decisions that would result if the Alameda decision is allowed to stand. For example, without the amendment, the finality of an FAA decision might have to await the running of the six-year statute of limitations applicable in district court, rather than 60 days under 46110. After the district court review, the decision would still be subject to review in the circuit courts of appeals.

**Sec. 407. Noise Disclosure.** The purpose of this section is to increase prospective homebuyers' awareness of areas near airports that are exposed to aircraft noise by requiring notice that certain properties are subject to noise, as depicted on noise exposure maps. This notice is required for approval of a loan by federally regulated lenders and Federal agency lenders.

To assure that noise exposure maps made available for noise disclosure are reasonably up to date, this section would also amend the requirements for revising noise exposure maps by adding a new requirement that noise exposure maps be revised if there is any significant reduction in noise contours depicted on a previously submitted noise exposure map. Under current law, such revisions are required only where an increase in noise results in a substantial new noncompatible use.

**Sec. 408. Compatible Land Use Planning and Projects by State and Local Governments.** This section would add a new provision to chapter 471 to allow the FAA

to use AIP funds to make grants to States and localities for land use planning near airports so that the communities may make the use of land in their jurisdictions more compatible with aircraft operations. The purpose is to achieve more responsible land uses around airports in jurisdictions that are not under the control of the airport proprietor. Conditions are proposed to avoid undermining or duplicating airport noise compatibility programs under FAR Part 150.

## **Title V--FAA Structural Reform**

**Sec. 501. Appointment of Deputy.** There are 11 modal Administrations within DOT. Only the FAA has a Deputy Administrator whose appointment requires Senate confirmation. In order to make the FAA appointment consistent with the other DOT agencies and to avoid any unnecessary delay, section 4 amends section 106 of title 49, United States Code, to eliminate the requirement for Senate confirmation. The Deputy would instead be appointed by the Secretary. He or she would still be a political appointee and therefore would undergo the normal "vetting" process during which congressional input may be considered informally. This section also provides that the Secretary would determine the level of compensation of the Deputy Administrator but, consistent with the pay cap applicable to other FAA executives, such level would not exceed that of the Administrator. This change is necessary to correct an anomaly created by the differences between the Executive Level IV compensation under title 5, United States Code, which currently applies to the Deputy Administrator, and the FAA's reformed pay system. The differences have the unintentional consequence of capping the Deputy's compensation at a level that is lower than other FAA executives.

**Sec. 502. MAC Appointments.** This section modifies the authority of the Federal Aviation Management Advisory Council (MAC) to change the requirement that the one remaining vacancy for an aviation interest member be filled through a nomination by the President, with confirmation by the Senate. Instead, the position would be filled by a nomination from the Secretary of Transportation. Similarly, the current vacancy on the MAC for an FAA air traffic services labor member would also be changed to one nominated by the Secretary. Now that the MAC is up and running, these changes will facilitate the initial appointments for the 2 positions on the MAC that have remained vacant since the MAC members were sworn in September 2000. This approach is also consistent with the congressional direction regarding how subsequent vacancies on the MAC should be filled.

**Sec. 503. Independent ATS Board.** This section would modify the structure and membership of what is now the Air Traffic Services Subcommittee of the MAC by separating it from the MAC to be a stand-alone Air Traffic Services Board (ATS Board). This change will improve the functioning of each advisory body by simplifying and clarifying their respective missions. The MAC will be focused on providing "user/customer" input to the FAA, while the ATS Board will target the safe and efficient operation of the air traffic control system. The FAA Administrator will be a member of the Board and serve as its Chairperson to provide the Board with leadership and improve

its functioning as a corporate board. Section 3 also eliminates compensation for the members of the ATS Board, allowing them to serve *pro bono*, which reduces potential conflict of interest issues. However, it provides an authorization for such sums as necessary for the Board to carry out its activities. The ATS Board will still be responsible for reviewing and making recommendations on the budget for air traffic control, but will do so based on DOT and OMB budget levels and within the normal procedures for developing the President's Budget. In accordance with constitutional principles, the Board's authority to "approve" actions of the air traffic PBO would be changed to "make recommendations on" such activities.

**Sec. 504. Responsibilities of the COO.** This section would make modest changes to clarify the role that the Chief Operating Officer (COO) of the air traffic control organization is intended to play. Although the legislation that established the position of COO was clear that the position was that of a Chief *Operating* Officer, the functions that the statute currently bestows upon the position, specifically those related to developing (rather than implementing) the agency's strategic plan and its budget, are those more in line with the position of a Chief *Executive* Officer (CEO). The amendments make clear that the COO would be responsible for the day-to-day operational functions of the air traffic control organization. These changes may help in the challenging task of identifying a more appropriate pool of candidates and recruiting a qualified individual who is interested in focusing on the day-to-day operational duties of a traditional COO.

## **Title VI--Aviation Insurance**

**Sec. 601. Ending Effective Date.** The proposed amendment would extend permanently the authority to provide war risk insurance coverage as defined in section 44302 relating to American aircraft or foreign-flag aircraft engaged in foreign air commerce or between at least two places, all of which are outside the United States, as well as continuation of non-premium insurance under section 44305, and would establish a December 31, 2005 termination date for the authority to provide war risk insurance for domestic carriers engaged in domestic flights added to the program immediately after the events of September 11, 2001.

## **Title VII—Small Community Transportation Service**

**Sec. 701. Small Community Transportation Service.** This section would, effective October 1, 2004, revise the current statutory provisions of Subtitle II of chapter 417 of title 49, United States Code (Small Community Air Service). As amended, the sections of the Subchapter would provide the following:

**41731.** This section defines the communities that are eligible for essential transportation service. This includes those traditionally eligible for Essential Air Service, both subsidized and non-subsidized. It disqualifies communities that lost subsidy eligibility in various Department orders and in statute.

**41732.** This section sets forth the types of essential transportation services that are eligible to receive federal funding, e.g., surface or air, and the criteria for the type of service that eligible places can receive. For example, the Department would subsidize only surface transportation for the least isolated communities. This section describes the application process and also requires that the Secretary shall determine what the minimum essential transportation requirements will be on a case-by-case basis after consultation with the affected community and state officials.

**41733.** This section describes: (1) the criteria that the Department would use in selecting an applicant to provide subsidized transportation (air or surface) and, (2) the various federal funding levels that are available to communities. No eligible place would receive essential transportation service subsidized 100 percent from the federal government. Rather, all eligible places would be required to contribute to the cost of the transportation service based on their isolation from all hub airports. The most isolated, i.e., those farther than 210 miles from the nearest Large or Medium Hub would be required to pay 10 percent of the total subsidy cost. Those communities within 100 miles of a Large or Medium Hub, or 75 miles of a Small Hub, or 50 miles of a non-hub with jet service, would be eligible for surface transportation only and would have to contribute 50 percent toward the compensation needed for that service. The remaining eligible places would have to contribute 25 percent toward either surface or air transportation.

**41734.** This section establishes notice requirements for both air and surface transportation providers who wish to suspend service. Any person providing service under a contract with the Department must file a 90-day notice before suspending service. In addition, the last air carrier serving a community must file the same 90-day notice, even if the carrier was not receiving subsidy. The Department will hold that service in place and provide compensation for it to the extent funds are available until replacement service can be secured, provided that the community continues to pay its share.

**41735.** This section allows for communities already receiving essential transportation service to receive an enhancement (e.g., a higher frequency of service or larger aircraft). It describes the conditions for eligibility, what types of assistance are available, and the level of community contribution required to be considered for enhanced service.

**41736.** This section describes the compensation guidelines for the essential and enhanced transportation service provided in sections 41731-41735. For example, it calls for payments to be reduced when the service is not provided. It further requires the Secretary in disbursing the total funds available to rank all eligible communities based on their isolation from all hubs, taking into account that a small hub does not provide the same connecting opportunities as a large or medium hub. If sufficient funds were not available to subsidize service for all communities, the most isolated would be given priority.

**41737.** This section is designed to provide financial assistance to communities that are not eligible for essential transportation service as well as for eligible communities that seek additional funds to support their services (e.g., marketing funds, studies). This section utilizes the existing Small Community Air Service Development Pilot Program

statutes and procedures, except it requires that communities pay at least 25 percent of the total cost of the proposed transportation initiative. Qualifying communities or consortia are limited to small hubs and non-hubs. This section further establishes criteria that the Department would consider in deciding whether to make an award, i.e., the community's traffic-generating potential, the total cost of the service, the community's isolation, whether the community is paying high fares, whether there is a public/private partnership established, and whether a broad segment of the traveling public will benefit. Eligible places, therefore, could theoretically receive financial support in up to three ways—essential transportation service, enhanced essential transportation service, and under this section. With respect to each, the eligible place would be required to make a financial contribution toward the transportation initiative undertaken.

**41738.** This section states that in code-share relationships, the carrier whose code is being used shares responsibility with the other carrier(s) for the quality of the service. This applies currently to all carriers, even well beyond the scope of the current EAS program.

**41739.** This section instructs the Secretary to encourage the submission of code-share proposals, either air-to-air or air-to-surface.

**41740.** This section makes funds from overflight fees credited to the FAA's special fees account available to the Department to operate the program.

### **Title VIII--Internal Revenue Code amendments**

**Sec. 801.** This section makes the necessary amendments to the Airport and Airway Trust Fund (26 U.S.C 9502) to authorize the continued use of the Fund through fiscal year 2007.